

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Mediacom Southeast LLC)	CSR 6699-E
)	
)	
)	
)	
Petition for Determination of Effective Competition)	
in various Kentucky Communities)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: July 17, 2007

Released: July 20, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Mediacom Minnesota LLC ("Mediacom") has filed a petition with the Commission pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission's rules for a determination that its cable systems serving the City of Sonora, the City of Upton, and the unincorporated areas of Larue County which are adjacent or connected to Upton, Kentucky (the "Communities"), are subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended ("Communications Act"),¹ and the Commission's implementing rules,² and are therefore exempt from cable rate regulation. No opposition to the petition was filed.³ Finding that Mediacom is subject to effective competition in the listed Communities, we grant the petition.

¹ 47 U.S.C. § 543(1).

² 47 C.F.R. § 76.905(b)(4).

³ On February 23, 2007, the Commission sent letters to various cable operators, including the above-captioned Mediacom petition, informing them of a deficiency in their petitions for effective competition. The letter noted that the Satellite Broadcasting and Communications Association ("SBCA") report submitted listed the number of DBS subscribers in the franchise area but failed to list the corresponding zip codes. The letter explained that the exclusion of the zip codes prevents affected local franchising authorities from ascertaining whether SBCA data accurately reflects the franchise area, and raises questions regarding the accuracy of the number of DBS subscribers in the franchise area. Cable operators were given 30 days to supplement their petition by supplying the missing zip code information. Local franchising authorities were permitted to supplement any existing opposition or file an opposition based on supplemental data within 50 days from the date of the Commission's letter. The above-captioned cable operator, Mediacom, filed the requested information for the above-captioned petition. No opposition to Mediacom's filing has been received by the Commission.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁴ as that term is defined by Section 623(1) of the Communications Act of 1934, as amended, and Section 76.905 of the Commission's rules.⁵ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁶

II. DISCUSSION

A. Competing Provider Effective Competition

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD"), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.⁷ Turning to the first prong of this test, we find that the DBS service of DirecTV Inc. ("DirecTV") and DISH Network ("Dish") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.⁸ The two DBS providers' subscriber growth reached approximately 26.1 million as of June 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV was the second largest, and DISH the third largest, MVPD provider during that period.⁹ In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the communities listed on Attachment A relating to the competing provider test are DBS subscribers, we conclude that the population of the communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.¹⁰ We further find that Mediacom has demonstrated that the Communities listed on Attachment A are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the "competing provider" test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Mediacom seeks to demonstrate the competing provider penetration in the Communities listed on Attachment A by submitting in support of its petition a subscriber tracking report from the Satellite Broadcasting and Communications Association ("SBCA"), which identified the number of subscribers

⁴ 47 C.F.R. § 76.906.

⁵ See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

⁶ See 47 C.F.R. §§ 76.906 & 907.

⁷ 47 U.S.C. § 543(1)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

⁸ See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁹ *Twelfth Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 06-11 at ¶¶ 6, 13, 72-73, 21 FCC Rcd 2503 (rel. March 3, 2006).

¹⁰ See 47 C.F.R. § 76.905(g).

attributable to the DBS providers within the Communities based on zip code + 4 extension areas. Mediacom asserts that it is the largest MVPD in Sonora and Upton because its subscribership exceeds the aggregate DBS subscribership for those franchise areas.¹¹ Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that Mediacom has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in those communities. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence demonstrating that its cable systems serving the Communities set forth on Attachment A are subject to effective competition under the competing provider analysis.

B. Low Penetration Effective Competition

5. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if “fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system.”¹² Mediacom provided information showing that less than 30 percent of the households within the Larue County franchise area subscribe to its cable services.¹³ Accordingly, we conclude that Mediacom has demonstrated the existence of “low penetration” effective competition in the unincorporated areas of Larue County, Kentucky which are adjacent or connected to Upton, Kentucky, pursuant to our rules.

III. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that the petition filed by Mediacom Southeast LLC for a determination of effective competition in the Communities **IS GRANTED**.

7. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to the local franchising authorities overseeing Mediacom Southeast LLC **IS REVOKED**.

8. This action is taken pursuant to authority delegated under Section 0.283 of the Commission’s rules.¹⁴

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division, Media Bureau

¹¹ Mediacom Petition at 6.

¹² 47 U.S.C § 543(l)(1)(A).

¹³ The precise penetration rate for Larue County is set forth on Attachment B.

¹⁴ 47 C.F.R. § 0.283.

Attachment A

Cable Operator Subject to Competing Provider Effective Competition

MEDIACOM SOUTHEAST LLC: CSR 6699-E

Communities	CUIDS	CPR*	DBS Subscribers⁺	2000 Census Household
<u>CSR 6699-E</u>				
Sonora	KY1148	15.22%	21	138
Upton	KY0736 KY0737	18.73%	53	283

Attachment B**Cable Operator Subject to Low Penetration Effective Competition**

MEDIACOM SOUTHEAST LLC: CSR 6699-E

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Level
<u>CSR 6699-E</u>				
Larue County	KY1190	5,275	11	0.002%

CPR*= Percentage of DBS penetration

+ = See Cable Operator Petitions